

REMARKS

Applicants present claims 13, 15, 16, 17 and 21-25. Claim 21 is amended.

Applicants traverse the rejection of claims 13, 15-17 and 21 under 35 U.S.C. 102(b) over Bose (US 5007233; the rejection of claims 22 and 23 under 35 U.S.C. 103(a) over Bose in view of Strand (US 5350239); and claims 24-25 under 35 U.S.C. 103(a) over Bose further in view of Hoevel (US 5836444).

Independent claim 13 defines an as-manufactured multi-wall sack that includes a feature that *"the amount and/or the type of pressure adhesive is selected so that the adhesion of the inner pouch to the outer bag is greater on one of a front or a rear side of the sack than on the opposite side of the sack"*. This is clearly a structural feature of the claimed sack. The significance of the feature is set forth in the context of the steps of folding a filled as-manufactured sack to close the sack. In Applicants view, the claimed feature that "the amount and/or the type of pressure adhesive is selected so that the adhesion of the inner pouch to the outer bag is greater on one of a front or a rear side of the sack than on the opposite side of the sack" is a structural feature that distinguishes the claimed invention from the reference(s) applied against claim 13.

Independent claim 21 defines a filled and sealed bulk packaging sack formed by filling and closing the as-manufactured multi-wall sack defined in claim 13.

The Examiner states in the final paragraph on page 3 of the Office Action that he "has interpreted the amount of adhesive (18) taught by Bose to more strongly adhere the inner bag to the outer bag on the sides with the adhesive than the opposing sides without the adhesive, such as the side folds formed when the bag is closed, which have an amount of no adhesive selected".

Basically, the Examiner is relying on the side edges of the folded Bose sack. As can be appreciated from Figure 4 of Bose, the folded Bose sack is essentially a flat sack and the side edges are a very small part of perimeter of the folded sack. It simply does not make sense to consider that the folded Bose sack could be folded in the sequence of steps defined in claim 13. Indeed, a person skilled in the art would have had no motivation – i.e., no rational reason – to have folded it as in claim 13.

Moreover, Applicants vigorously dispute the assertion that Bose discloses areas where there is no adhesive. Applicants submit there is no basis in Bose to conclude that the side edges of the folded Bose sack shown in Figure 4 of Bose would have no adhesive. A person skilled in the art reading of the paragraph bridging columns 3 and 4 of Bose would conclude the ultrasonic welding means 19 and the particular type of material used to form the inner pouch 14 of the Bose sack produce "green tack" 18 that adheres the inner pouch 14 and the outer bag 12 together. It would therefore be expected by such a person skilled in the art that the green tack will also produce along the side edges of the Bose sack.

Furthermore, interpreting the Bose reference as in the Office Action seems unrelated to what Bose discloses. Applicants respectfully request the Examiner to supply a fact-based Examiner's Declaration to supply the factual predicate for the assertions in the Office Action, including those at pages 3-4.

Applicants note the Examiner's interpretation of their claims. It is axiomatic that all claim language must be considered. It is suggested that relying on a decision (Office Action, page 3) by an intermediate court that predates pre-*John v. Graham Deere* and *KSR Int'l v. Teleflex Inc.* should be re-visited and withdrawn.

Lastly, Applicants suggest the the argument bridging page 6 to page 7 in the Office Action be reconsidered and withdrawn. Applicants submit the 'rule' simply does not apply, even if there is a "rule." For example, if the prior art does not teach all the structural elements in the claims, as is the case in this application, then the 'rule' asserted in the Office Action does not apply. (Of course, regardless of the elements present, if the prior art could not function in the manner recited as a claimed apparatus is intended to be employed, then the 'rule' asserted in the Office Action does not apply, which is another reason to reconsider and withdraw the reasoning in the Office Action.)

Conclusion

Applicants respectfully submit claims 13, 15-17 and 21-25 are in condition for allowance, and respectfully solicit a Notice of Allowance.

The Examiner is cordially invited to telephone the undersigned to discuss any aspect of the claims with a view towards any suggestions, comments or questions concerning this application.

To the extent necessary, Applicants hereby request any required extension of time not otherwise requested and hereby authorize the Commissioner to charge any required fee not otherwise authorized, including application processing, extension, extra claims, statutory disclaimer, issue and publication fees, to Deposit Account No. 06-1135 regarding Order No. 7383/88167.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY LLP

/Kendrew H. Colton/

Kendrew H. Colton, Registration No. 30,368

OFFICIAL CORRESPONDENCE TO
Customer No. 42798

FITCH, EVEN, TABIN & FLANNERY LLP
One Lafayette Center
1120 20th Street, NW, Suite 750 South
Washington, DC 20036
Tel: (202) 419-7000
Fax: (202) 419-7007